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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN GILBERT HERNANDEZ,

Defendant and Appellant.

D071828

(Super. Ct. No. RIF129735)

APPEAL from an order of the Superior Court of Riverside, Steven G. Counelis,
Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

The underlying offenses in this case occurred in 2006. A jury convicted appellant,
Steven Gilbert Hernandez of three counts of assault with a firearm (Pen. Code,¹ § 245,
subd. (a)(2)); two counts of being a felon in possession of a firearm (§ 12021,

¹ All further statutory references are to the Penal Code unless otherwise specified.

subd. (a)(1)); one count of discharge of a firearm at an inhabited vehicle (§ 246) and one count of burglary (§ 459). Also, found true were five prior serious felony convictions (§ 667, subd. (a)(1)), and five prior serious/violent felony prior convictions (§ 667, subds. (b)-(i)). Hernandez was sentenced to a total term of 190 years to life.

In July 2010, this Court affirmed the convictions but remanded the case for resentencing. (*People v. Hernandez* (July 19, 2010, D055334) [nonpub. opn.].) On remand, Hernandez was sentenced to a total term of 100 years to life, consecutive to a 15-year determinate term.

In January 2017, Hernandez filed a petition for resentencing under Proposition 36 (§ 1170.126). The petition was denied based upon appellant's use of a firearm during the underlying offenses.

Hernandez filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel states he has been unable to identify any arguable issue for reversal on appeal. Counsel asks this court to review the record for error as mandated by *Wende*. We offered Hernandez the opportunity to file his own brief on appeal, but he has not responded.

STATEMENT OF FACTS

The facts of the underlying offenses were fully set forth in our opinion affirming the convictions. (*People v. Hernandez, supra*, D055334.) We offer only a brief summary of those facts here. The crimes arise from two distinct events, one occurring on April 1, 2006, and one occurring on April 3, 2006.

On April 1, 2006, Hernandez pulled his car in front of the victim's car. The victim honked at Hernandez. Hernandez then got out of his car and threw a beer can at the victim's car. As the victim drove away, Hernandez fired a shot at her car, which lodged a bullet in the bumper of the victim's car.

On April 3, 2006, Hernandez entered the home of another. Inside he brandished a firearm in the face of one of the occupants. When others arrived, Hernandez left the residence.

DISCUSSION

As we have noted, appellate counsel has filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), indicating counsel has not identified any arguable issues for reversal on appeal. Counsel has not identified any possible issues for our consideration. Although counsel has not fully complied with the requirements of the *Anders* opinion, such failure in this case has not adversely affected our review. The record of the challenged order is brief. The underlying convictions have been thoroughly evaluated in our prior opinion. There is, and can be no challenge to the sentencing on remand, which occurred years before the instant proceeding. The only question on this appeal is the propriety of the trial court's order denying the petition for resentencing. The facts of the case as set forth in our prior opinion plainly support the trial court's decision.

We have reviewed the entire record as mandated by *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738. We have not discovered any reasonably arguable issue for reversal on appeal. Competent counsel has represented Hernandez on this appeal.

DISPOSITION

The order denying the petition for resentencing under section 1170.126 is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

O'ROURKE, J.

DATO, J.